

EXHIBIT 1

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

THOMAS SPITZER, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ROBERT C. FLEXON, DARREN R.
JAMISON, JOHN J. JURIC, SCOTT W.
ROBINSON, and FREDERICK S.
HENCKEN III,

Defendants.

Case No. 2:23-cv-08659-HDV (MARx)

CLASS ACTION

EXHIBIT 1

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement, dated as of April 4, 2025 (the “Stipulation”), which embodies the terms and conditions of settlement of the above-captioned action (the “Action”), is entered into between (a) Lead Plaintiff Michael Denisevich and Plaintiff Kevin Rudisill (“Plaintiffs”), individually and on behalf of the Settlement Class (defined below); and Defendants Robert C. Flexon (“Flexon”), Darren R. Jamison (“Jamison”), Scott W. Robinson (“Robinson”), and Frederick S. Hencken III (“Hencken”) (collectively, the “Defendants”).¹ Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to fully, finally, and forever compromise, settle, release, resolve, and dismiss with prejudice the Action and all claims asserted therein or that could have been asserted therein.

Whereas:

A. This Action is a proposed securities class action subject to the Private Securities

¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶1 herein.

1 Litigation Reform Act of 1995 (the “PSLRA”), *see* 15 U.S.C. § 78u-4 *et seq.*

2 B. On October 13, 2023, Thomas Spitzer filed a Class Action Complaint for Violations of
3 the Federal Securities Laws in the United States District Court for the Central District of California,
4 styled *Thomas Spitzer v. Robert C. Flexon et al.*, No. 2:23-cv-08659. Dkt. No. 1.

5 C. On February 12, 2024, the Court appointed Michael Denisevich as Lead Plaintiff and
6 approved Mr. Denisevich’s selections of Pomerantz LLP and The Rosen Law Firm, P.A. as Co-Lead
7 Counsel for the class. Dkt. No. 38.

8 D. On February 28, 2024, the Court entered the Parties’ Proposed Order Regarding
9 Scheduling for Amended Complaint and Answer or Motion to Dismiss the Amended Complaint, which
10 included an agreement that Defendants would not object to Plaintiffs filing a second amended complaint
11 within thirty (30) days of any restatement of previously issued financial statements of non-party
12 Capstone Green Energy Corp.,² provided Plaintiffs gave Defendants notice of their intent to file a second
13 amended complaint within five days of the restatement’s filing. Dkt. No. 42 n.1.

14 E. On April 26, 2024, Plaintiffs filed an Amended Class Action Complaint for Violation of
15 the Federal Securities Laws, adding Plaintiff Kevin Rudisill to the Action and removing John Juric as a
16 Defendant. Dkt. No. 43.

17 F. On June 13, 2024, Capstone filed a restatement and Plaintiffs provided Defendants notice
18 of their intent to file a second amended complaint.

19 G. On July 29, 2024, Plaintiffs filed a Second Amended Class Action Complaint for
20 Violation of the Federal Securities Law asserting claims against Defendants under Section 10(b) of the
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² Capstone Green Energy Corp. and its affiliates (“Capstone” or the “Company”), filed for Chapter 11
bankruptcy in the United States Bankruptcy Court for the District of Delaware (“Delaware Bankruptcy
Court”) on September 28, 2023. The lead bankruptcy case is styled *In re: Capstone Green Energy
Corporation, et al.*, No. 23-11634-LSS (Bank. D. Del.). None of these entities is a defendant in this
Action.

1 Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder. Dkt.
2 No. 46.

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4 H. On September 6, 2024, the Court stayed the Action to allow the parties to engage in
5 discussions to potentially resolve this Action (the “Stay Order”). Dkt. No. 48.

6 I. On January 15, 2025, in accordance with L.R. 16-15.7, the Parties notified the Court that
7 they had reached a settlement in principle to fully resolve the Parties’ ongoing dispute. Dkt. No. 55.

8 J. The agreement was memorialized in a memorandum of understanding (the
9 “Memorandum of Understanding”) which was fully executed on January 30, 2025. The Memorandum
10 of Understanding sets forth, among other things, the Parties’ agreement to fully and finally settle and
11 release all claims, liabilities, demands, damages, losses, or causes of actions, based upon, related to, or
12 arising out of any claims, allegations, representations, omissions, or other matters that are or could have
13 been the subject of the Action, whether known or unknown relating to the purchase, acquisition, sale,
14 disposition or holding of Capstone securities during the Settlement Class Period, in return for a cash
15 payment by or on behalf of Defendants of \$2,250,000 for the benefit of the Settlement Class.
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17 K. This Stipulation (together with the exhibits hereto) reflects the final and binding
18 agreement between the Parties.
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20 L. Based upon their investigation, prosecution and mediation of the case, Plaintiffs and
21 Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and
22 adequate to Plaintiffs and the other members of the Settlement Class, and in their best interests. Based
23 on Plaintiffs’ direct oversight of the prosecution of this matter and with the advice of their counsel,
24 Plaintiffs have agreed to settle and release all claims, liabilities, demands, damages, losses, or causes of
25 actions, based upon, related to, or arising out of any claims, allegations, representations, omissions, or
26 other matters that are or could have been the subject of the Action, whether known or unknown relating
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1 to the purchase, acquisition, sale, disposition or holding of Capstone securities during the Settlement
2 Class Period, pursuant to the terms and provisions of this Stipulation, after considering, among other
3 things: (a) the substantial financial benefit that Plaintiffs and the other members of the Settlement Class
4 will receive under the proposed Settlement; and (b) the significant risks and costs of continued litigation
5 and trial.
6

7 M. This Stipulation constitutes a compromise of matters that are in dispute between the
8 Parties. The Parties are entering into this Stipulation solely to eliminate the uncertainty, burden and
9 expense of further litigation. All Defendants deny, and continue to deny, any wrongdoing, any and all
10 allegations of fault, liability, wrongdoing, or damages whatsoever, including, without limitation, any
11 allegation that they have committed any act or omission giving rise to any liability under the Exchange
12 Act, or Rule 10b-5 promulgated thereunder, or the Securities Act. Specifically, Defendants expressly
13 have denied, and continue to deny, that Plaintiffs have asserted any valid claims against them, including,
14 without limitation, any liability arising out of any of the conduct, statements, acts, or omissions alleged,
15 or that could have been alleged, in the Action. Defendants also have denied, and continue deny, among
16 other allegations, the allegations that the Plaintiffs or the Settlement Class have suffered any damages,
17 or that Plaintiffs or the Settlement Class were harmed by the conduct alleged in the Action or that they
18 could have alleged as part of the Action. In addition, Defendants maintain that they have meritorious
19 defenses to all claims alleged in the Action.
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22 N. As set forth below, neither the Settlement nor of the terms of this Stipulation shall in any
23 event be construed or deemed to be evidence of or an admission or concession on the part of any of the
24 Defendants or any of Defendants' Releasees with respect to any claim or allegation of any fault or
25 liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants
26 have, or could have, asserted. The Defendants expressly deny that Plaintiffs have asserted any valid
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1 claims as to any of the Defendants, and expressly deny any and all allegations of fault, liability,
2 wrongdoing or damages whatsoever. Similarly, this Stipulation shall in no event be construed or deemed
3 to be evidence of or an admission or concession on the part of Plaintiffs of any infirmity in any of the
4 claims asserted in the Action, or an admission or concession that any of the Defendants' defenses to
5 liability had any merit. Each of the Parties recognizes and acknowledges, however, that the Action has
6 been initiated, filed and prosecuted by Plaintiffs in good faith and defended by Defendants in good faith,
7 that the Action is being voluntarily settled with the advice of counsel, and that the terms of the
8 Settlement are fair, adequate and reasonable.
9

10 NOW THEREFORE, without any admission or concession on the part of Plaintiffs of any lack
11 of merit in the Action, and without admission or concession on the part of Defendants of any liability
12 or wrongdoing or lack of merit in the defenses asserted to the claims alleged in this Action, it is hereby
13 STIPULATED AND AGREED, by and among Plaintiffs (individually and on behalf of all other
14 members of the Settlement Class) and Defendants, by and through their respective undersigned counsel
15 and subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure,
16 that, in consideration of the benefits flowing to the Parties from the Settlement, all Released Plaintiffs'
17 Claims as against the Defendants' Releasees and all Released Defendants' Claims as against Plaintiffs'
18 Releasees shall be fully, finally, and forever compromised, settled, released, relinquished, waived,
19 discharged and dismissed with prejudice, in accordance with and subject to the terms and conditions set
20 forth below.
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23 **DEFINITIONS**

24 1. As used in this Stipulation and any exhibits attached hereto and made a part hereof, the
25 following capitalized terms shall have the following meanings:
26

27 a. "Action" means the putative securities class action styled as *Thomas Spitzer v.*
28

Robert C. Flexon et al., No. 2:23-cv-08659 (C.D. Cal.).

b. “Additional Lead Plaintiff’s Counsel” means The Schall Law Firm.

c. “Amended Complaint” means the Second Amended Class Action Complaint for Violations of the Federal Securities Laws filed on July 29, 2024 (Dkt. No. 46).

d. “Authorized Claimant” means a Settlement Class Member who submits a valid Claim to the Claims Administrator for payment from the Net Settlement Fund.

e. “Capstone” means Capstone Green Energy Corporation and its affiliates.

f. “Capstone Securities” means publicly traded Capstone stock.

g. “Claim” means a Proof of Claim Form submitted to the Claims Administrator.

h. “Claim Form” or “Proof of Claim Form” means the form, substantially in the form attached hereto as Exhibit A-2, that a Claimant or Settlement Class Member must complete and submit should that Claimant or Settlement Class Member seek to share in a distribution of the Net Settlement Fund.

i. “Claimant” means a person or entity who or which submits a Claim Form to the Claims Administrator seeking to be eligible to share in the proceeds of the Settlement Fund.

j. “Claims Administrator” means the firm Strategic Claims Services to provide all notices approved by the Court to potential Settlement Class Members and to administer the Settlement.

k. “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

l. “Court” means the United States District Court for the Central District of California.

m. “Defendants” means Robert C. Flexon (“Flexon”), Darren R. Jamison (“Jamison”), Scott W. Robinson (“Robinson”), and Frederick S. Hencken III (“Hencken”).

1 n. “Defendants’ Counsel” means Latham & Watkins LLP.

2 o. “Defendants’ Releasees” means Defendants, Defendants’ Counsel, former
3 Defendant John J. Juric, Capstone, and any persons or entities affiliated or connected with any of them,
4 including all of their respective current and former officers, directors, employees, consultants,
5 accountants, attorneys, affiliated persons and entities, control persons, sponsors, parents, subsidiaries,
6 beneficiaries, heirs, successors, predecessors, assigns, attorneys, agents, insurers, reinsurers, and
7 auditors.
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9 p. “Effective Date” with respect to the Settlement means the first date by which all
10 of the events and conditions specified in ¶ 32 of this Stipulation have been met and have occurred or
11 have been waived.
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13 q. “Escrow Account” means an account maintained at The Huntington National
14 Bank wherein the Settlement Amount shall be deposited and held in escrow under the control of Lead
15 Counsel.
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17 r. “Escrow Agent” means The Huntington National Bank or its appointed agents.
18 The Escrow Agent shall perform the duties as set forth in this Stipulation and any order of the Court in
19 connection with the Settlement.

20 s. “Escrow Agreement” means the agreement between Lead Counsel and the
21 Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

22 t. “Final,” with respect to the Judgment or any other court order, means: (i) if no
23 appeal is filed, the expiration date of the time provided for filing or noticing any appeal under the Federal
24 Rules of Appellate Procedure, *i.e.*, thirty (30) days after entry of the judgment or order; or (ii) if there
25 is an appeal from the judgment or order, (a) the date of final dismissal of all such appeals, or the final
26 dismissal of any proceeding on certiorari or otherwise, or (b) the date the judgment or order is finally
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1 affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form
2 of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of
3 review is granted, the date of final affirmance following review pursuant to that grant. However, any
4 appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with
5 respect to (i) attorneys' fees, costs or expenses, or (ii) the plan of allocation of Settlement proceeds (as
6 submitted or subsequently modified), shall not in any way delay or preclude a judgment from becoming
7 Final.
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9 u. "Judgment" means the final judgment, substantially in the form attached hereto
10 as Exhibit B, to be entered by the Court approving the Settlement.
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12 v. "Lead Counsel" means the law firms Pomerantz LLP and The Rosen Law Firm,
13 P.A.

14 w. "Lead Plaintiff" means Lead Plaintiff Michael Denisevich.

15 x. "Litigation Expenses" means the costs and expenses incurred in connection with
16 commencing, prosecuting and settling the Action, for which Lead Counsel intends to apply to the Court
17 for reimbursement from the Settlement Fund.
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19 y. "Net Settlement Fund" means the Settlement Fund less: (i) any Taxes; (ii) any
20 Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys'
21 fees awarded by the Court; and (v) any awards to Plaintiffs, which may include the costs and expenses
22 of Plaintiffs directly related to their representation of the Settlement Class.

23 z. "Notice" means the Notice of (I) Pendency of Class Action and Proposed
24 Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees,
25 Reimbursement of Litigation Expenses, and Awards to Plaintiffs, substantially in the form attached
26 hereto as Exhibit A-1, which is to be mailed and/or emailed to Settlement Class Members.
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1 aa. “Notice and Administration Costs” means the costs, fees and expenses that are
2 incurred by the Claims Administrator and/or Lead Counsel in connection with: (i) providing notices to
3 the Settlement Class; and (ii) administering the Settlement, including but not limited to the Claims
4 process, as well as any costs, fees and expenses incurred in connection with the Escrow Account.

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6 bb. “Parties” means the Defendants and Plaintiffs, on behalf of themselves and the
7 Settlement Class.

8 cc. “Plaintiffs” means Lead Plaintiff Michael Denisevich and Plaintiff Kevin
9 Rudisill.

10 dd. “Plaintiffs’ Counsel” means Lead Counsel and Additional Lead Plaintiff’s
11 Counsel, which, at the direction and under the supervision of Lead Counsel, performed services on
12 behalf of the Settlement Class in the Action.

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14 ee. “Plaintiffs’ Releasees” means Plaintiffs, Plaintiffs’ Counsel, and all other
15 Settlement Class Members, and their respective current and former officers, directors, agents, parents,
16 affiliates, subsidiaries, successors, predecessors, assigns, assignees, employees, attorneys, heirs,
17 executors, and administrators in their capacities as such.

18 ff. “Plan of Allocation” means the proposed plan of allocation of the Net Settlement
19 Fund set forth in the Notice.

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21 gg. “Preliminary Approval Order” means the order, substantially in the form attached
22 hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement and directing that
23 notice of the Settlement be provided to the Settlement Class.

24 hh. “PSLRA” means the Private Securities Litigation Reform Act of 1995, 15 U.S.C.
25 § 78u-4, as amended.

26 ii. “Recognized Claim” means, under the proposed Plan of Allocation, the sum of a
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1 Claimant's Recognized Losses for all shares of Capstone Securities purchased or acquired during the
2 Settlement Class Period.

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4 jj. "Recognized Loss" means each Authorized Claimant's share of the Net
5 Settlement Fund based upon the recognized loss formula in the proposed Plan of Allocation set forth in
6 the Notice.

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8 kk. "Released Claims" means all Released Defendants' Claims and all Released
9 Plaintiffs' Claims.

10 ll. "Released Defendants' Claims" means upon final judicial approval of the
11 Settlement, Defendants and Defendants' Releasees shall receive a full, unconditional release from
12 Plaintiffs and all members of the Settlement Class for any and all claims, liabilities, demands, damages,
13 losses, or causes of action, based upon, related to, or arising out of any claims, allegations,
14 representations, omissions, or other matters that are or could have been the subject of the Action,
15 whether known or Unknown (as defined below), relating to the purchase, acquisition, sale, disposition
16 or holding of Capstone Securities during the Settlement Class Period. Released Defendants' Claims do
17 not include: (i) any claims relating to the enforcement of the Settlement; (ii) claims asserted in
18 shareholder derivative actions; and (iii) any claims of any person or entity who or which submits a
19 request for exclusion that is accepted by the Court.
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21 mm. "Released Plaintiffs' Claims" means upon final judicial approval of the
22 Settlement, Plaintiffs and the Settlement Class shall receive a full, unconditional release from
23 Defendants for any and all claims, liabilities, demands, damages, losses, or causes of action, based upon,
24 related to, or arising out of any claims, allegations, representations, omissions, or other matters that are
25 or could have been the subject of the Action, whether known or Unknown, relating to the purchase,
26 acquisition, sale, disposition or holding of Capstone Securities during the Settlement Class Period.
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Released Plaintiffs' Claims do not include any claims relating to the enforcement of the Settlement.

nn. "Releasee(s)" means each and any of the Defendants' Releasees and each and any of the Plaintiffs' Releasees.

oo. "Releases" means the releases set forth in ¶¶ 5-6 of this Stipulation.

pp. "Settlement" means the settlement between Plaintiffs and Defendants on the terms and conditions set forth in this Stipulation.

qq. "Settlement Amount" means \$2,250,000.00 in cash.

rr. "Settlement Class" means all persons or entities who purchased or otherwise acquired publicly traded Capstone Green Energy Corporation Securities between November 11, 2020 and October 4, 2023, inclusive, and were allegedly damaged thereby. Excluded from the Settlement Class are Defendants, the officers and directors of Capstone, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest. Also excluded are any persons or entities who properly exclude themselves by filing a valid and timely request for exclusion in accordance with the requirements set by the Court.

ss. "Settlement Class Member" means each person and entity who or which is a member of the Settlement Class.

tt. "Settlement Class Period" means the period between November 11, 2020 and October 4, 2023, inclusive.

uu. "Settlement Fund" means the Settlement Amount plus any and all interest earned thereon.

vv. "Settlement Hearing" means the hearing set by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

1 ww. “Summary Notice” means the Summary Notice of (I) Pendency of Class Action
2 and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’
3 Fees, Reimbursement of Litigation Expenses, and Awards to Plaintiffs, substantially in the form
4 attached hereto as Exhibit A-3, to be published as set forth in the Preliminary Approval Order.
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6 xx. “Taxes” means: (i) all federal, state and/or local taxes of any kind (including any
7 interest or penalties thereon) on any income earned by the Settlement Fund; (ii) the expenses and costs
8 incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes owed
9 by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants); and
10 (iii) all taxes imposed on payments by the Settlement Fund, including withholding taxes.
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12 yy. “Unknown Claims” means any claims that Plaintiffs and all members of the
13 Settlement Class do not know or suspect to exist at the time of the release, which, if known, might have
14 affected the decision to enter into the release or to object or not to object to the Settlement. Plaintiffs
15 and members of the Settlement Class shall be deemed to waive, and shall waive and relinquish to the
16 fullest extent permitted by law, any and all provisions, rights, and benefits conferred by any law of the
17 United States or any state or territory of the United States, or principle of common law, which governs
18 or limits a person’s release of Unknown Claims; further, with respect to any and all of the Released
19 Claims, including any and all Unknown Claims, that: (i) Plaintiffs and members of the Settlement Class
20 shall be deemed to waive, and shall waive and relinquish, to the fullest extent permitted by law, the
21 provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides as follows:
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23 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
24 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
25 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
26 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
27 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
28 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;”

(ii) Plaintiffs and members of the Settlement Class also shall be deemed to waive any and all provisions,

1 rights, and benefits conferred by any law of any state or territory of the United States, or principle of
2 common law, which is similar, comparable, or equivalent to California Civil Code § 1542; and (iii)
3 Plaintiffs, on behalf of the Settlement Class, acknowledge that members of the Settlement Class may
4 discover facts in addition to or different from those that they now know or believe to be true with respect
5 to the subject matter of this release, but that it is the intention of Plaintiffs, on behalf of the Settlement
6 Class, to fully, finally, and forever settle and release with prejudice any and all Released Claims,
7 including any and all Unknown Claims, hereby known or unknown, suspected, or unsuspected, which
8 now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery
9 or existence of such additional or different facts. Plaintiffs acknowledge, and the Settlement Class
10 Members shall be deemed by operation of the entry of a final order and judgment approving the
11 Settlement to have acknowledged, that the foregoing waiver was separately bargained for and is a key
12 element of the Settlement of which this release is a part.
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15 **CLASS CERTIFICATION**

16 2. Solely for the purposes of the Settlement and for no other purpose, Defendants stipulate
17 and agree to: (a) certification of a Settlement Class (as defined in ¶ 1(rr)) pursuant to Rules 23(a) and
18 23(b)(3) of the Federal Rules of Civil Procedure; (b) certification of Lead Plaintiff Michael Denisevich
19 and Plaintiff Kevin Rudisill as Class Representatives for the Settlement Class; and (c) appointment of
20 Lead Counsel as Class Counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of
21 Civil Procedure. The certification of the Settlement Class shall be binding only with respect to the
22 Settlement of the Action and only if the Judgment contemplated by the Stipulation becomes Final and
23 the Effective Date occurs. Defendants' stipulation to the certification of the Settlement Class is not and
24 shall not be construed as evidence or an admission that any non-Settlement Class is or would have been
25 consistent with Rule 23 of the Federal Rules of Civil Procedure and is without prejudice to their right
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1 to contest class certification if the Settlement (a) is not approved by the Court; (b) is terminated; or (c)
2 fails to become effective for any reason.

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4 **PRELIMINARY APPROVAL OF SETTLEMENT**

5 3. Promptly upon execution of this Stipulation, Plaintiffs will move for preliminary
6 approval of the Settlement, certification of the Settlement Class for settlement purposes only, and the
7 scheduling of a hearing for consideration of final approval of the Settlement, which motion shall be
8 unopposed by Defendants. Concurrently with the motion for preliminary approval, Plaintiffs shall apply
9 to the Court for, and Defendants shall not oppose, entry of the Preliminary Approval Order, substantially
10 in the form attached hereto as Exhibit A.

11
12 **RELEASE OF CLAIMS**

13 4. The obligations incurred pursuant to this Stipulation are in consideration of: (i) the full
14 and final disposition of the Action as against Defendants; and (ii) the Releases provided for herein.

15 5. Pursuant to the Judgment, and without further action by anyone, upon the Effective Date
16 of the Settlement, Plaintiffs and each of the other Settlement Class Members, on behalf of themselves,
17 and their current and former officers, directors, agents, parents, affiliates, subsidiaries, successors,
18 predecessors, assigns, assignees, employees, attorneys, heirs, executors, and administrators in their
19 capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have,
20 fully, finally, and forever compromised, settled, released, resolved, relinquished, waived and discharged
21 any and all Released Plaintiffs' Claims against the Defendants and Defendants' Releasees, and shall be:
22 (a) permanently and forever enjoined from instituting, commencing or prosecuting, in any capacity, any
23 and all Released Plaintiffs' Claims against any of the Defendants' Releasees; and (b) deemed to
24 permanently covenant to refrain from instituting, commencing or prosecuting, in any capacity, any and
25 all Released Plaintiffs' Claims against any of the Defendants' Releasees.
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1 6. Pursuant to the Judgment, and without further action by anyone, upon the Effective Date
2 of the Settlement, Defendants, on behalf of themselves, and their current and former officers, directors,
3 agents, parents, affiliates, subsidiaries, successors, predecessors, assigns, assignees, employees,
4 attorneys, heirs, executors, and administrators in their capacities as such, shall be deemed to have, and
5 by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled,
6 released, resolved, relinquished, waived and discharged any and all Released Defendants' Claims
7 against Plaintiffs and Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting
8 any or all of the Released Defendants' Claims against any of Plaintiffs' Releasees. This release shall
9 not apply to any person or entity who or which submits a request for exclusion from the Settlement
10 Class that is accepted by the Court.
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13 7. Notwithstanding ¶¶ 5-6 above, nothing in the Judgment shall bar any action by any of
14 the Parties to enforce or effectuate the terms of this Stipulation or the Judgment.
15

16 **THE SETTLEMENT CONSIDERATION**

17 8. In consideration of the full and complete settlement of the Released Plaintiffs' Claims
18 against Defendants and Defendants' Releasees, after Defendants' Counsel's receipt from Lead Counsel
19 of the information necessary to effectuate a transfer of funds to the Escrow Account, including wiring
20 instructions that include the bank name and ABA routing number, account name and number, and a
21 signed W-9 reflecting a valid taxpayer identification number for the qualified settlement fund in which
22 the Settlement Amount is to be deposited, the Defendants shall pay or cause to be paid two million,
23 two-hundred and fifty thousand dollars (\$2,250,000), to be made into the Escrow Account specified by
24 Plaintiffs within the latter of (i) thirty (30) calendar days of the Court granting preliminary approval of
25 the Settlement or (ii) receipt of accurate payment instructions and W-9 for the Settlement Amount. If
26 Defendants fail to make or cause to be made such payment in accordance with the terms of this
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Paragraph, Plaintiffs shall have the right at their sole option to terminate the Settlement or enforce it according to its terms.

9. Defendants' sole monetary obligation under the Settlement, including in connection with the provision and administration of notice and the administration of the Settlement and any costs associated therewith and any attorneys' fees or costs awarded by the Court, is the Settlement Amount to be paid or caused to be paid solely by Defendants, and Defendants shall not be liable for any other amount or amounts. Defendants and Defendants' Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or determination by Plaintiffs' Counsel or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any loss suffered by, or fluctuation in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund, distributions, or other payments from the Escrow Account, or the filing of any federal, state, or local returns.

USE OF SETTLEMENT FUND

10. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and Administration Costs; (c) any Litigation Expenses awarded by the Court; (d) any attorneys' fees awarded by the Court; and (e) any awards to Plaintiffs. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 19-30 below.

11. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent

1 shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court
2 until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation
3 and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account
4 exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and
5 shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the
6 amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC.
7 In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury
8 Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is
9 fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if
10 short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent
11 may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit
12 of the United States.
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15 12. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund
16 within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as administrator of the
17 Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely
18 responsible for filing or causing to be filed all informational and other tax returns as may be necessary
19 or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-
20 2(k)) for the Settlement Fund. Lead Counsel shall also be responsible for causing payment to be made
21 from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. Defendants or the
22 Defendants' Releasees shall not have any liability or responsibility whatsoever for any such Taxes.
23 Upon written request, Defendants will provide to Lead Counsel the statement described in Treasury
24 Regulation § 1.468B-3(e). Lead Counsel, as administrator of the Settlement Fund within the meaning
25 of Treasury Regulation § 1.468B 2(k)(3), shall timely make such elections as are necessary or advisable
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1 to carry out this paragraph, including, as necessary, making a “relation back election,” as described in
2 Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at
3 the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or
4 appropriate in connection therewith.
5

6 13. All Taxes shall be paid out of the Settlement Fund and shall be timely paid by the Escrow
7 Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without
8 further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set
9 forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes
10 on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided
11 herein. Defendants or the Defendants’ Releasees shall have no responsibility or liability whatsoever for
12 the acts or omissions of Lead Counsel or its agents or any other entity or person with respect to the
13 payment of Taxes, as described herein.
14

15 14. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective
16 Date, no Defendant, Defendants’ Releasee, or any other person or entity who or which paid any portion
17 of the Settlement Amount shall have any right to the return of the Settlement Fund or any portion thereof
18 for any reason whatsoever, including without limitation, the number of Claim Forms submitted, the
19 collective amount of Recognized Claims of Authorized Claimants, the percentage of recovery of losses,
20 or the amounts to be paid to Authorized Claimants from the Net Settlement Fund; *provided, however,*
21 that if this Settlement is terminated or if the Court does not approve the Settlement, the Settlement
22 Amount shall be returned to the appropriate sources of the funds pursuant to Defendants’ instructions
23 within fifteen (15) business days of either the notice of termination or the Court’s Order denying
24 approval, less any reasonable Notice and Administration Costs actually paid or incurred to the date of
25 termination or after preliminary approval of the Settlement.
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1 15. Notwithstanding the fact that the Effective Date of the Settlement has not yet occurred,
2 Lead Counsel may pay from the Settlement Fund, without further approval from Defendants or further
3 order of the Court, all Notice and Administration Costs actually incurred and paid or payable up to
4 \$400,000. Such costs and expenses shall include, without limitation, the actual costs of printing and
5 mailing or emailing the Notice, publishing the Summary Notice, reimbursements to nominee owners
6 for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees
7 charged by the Claims Administrator in connection with providing notice, administering the Settlement
8 (including processing the submitted Claims), and the fees, if any, of the Escrow Agent. In the event that
9 the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration
10 Costs paid or incurred, including any related fees and Taxes, shall not be returned or repaid to
11 Defendants, any of Defendants' Releasees, or any other person or entity who or which paid any portion
12 of the Settlement Amount.

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15 **ATTORNEYS' FEES, LITIGATION EXPENSES,**
16 **AND AWARDS TO PLAINTIFFS**

17 16. Lead Counsel will apply to the Court for a collective award of attorneys' fees to
18 Plaintiffs' Counsel to be paid from the Settlement Fund, which will include interest accrued from the
19 time of the creation of the Settlement Fund. Lead Counsel also will apply to the Court for reimbursement
20 of litigation expenses with interest, and a request for reimbursement of Plaintiffs' costs and expenses,
21 including time and/or lost wages incurred in prosecuting the Action, directly related to their
22 representation of the Settlement Class, to be paid from the Settlement Fund. Lead Counsel's application
23 for an award of attorneys' fees and/or litigation expenses and/or awards to Plaintiffs is not the subject
24 of any agreement between Defendants and Plaintiffs other than what is set forth in this Stipulation.

25
26 17. Any attorneys' fees, litigation expenses, and/or awards to Plaintiffs that are awarded by
27 the Court shall be paid to Lead Counsel immediately upon entry of an order by the Court granting such
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1 award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal
2 therefrom, or collateral attack on the Settlement or any part thereof, subject to Lead Counsel's obligation
3 to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net
4 rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this
5 Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral
6 attack, the award of attorneys' fees and/or litigation expenses and/or awards to Plaintiffs is reduced or
7 reversed and such order reducing or reversing the award has become Final. Lead Counsel shall make
8 the appropriate refund or repayment in full no later than fifteen (15) days after: (a) receiving from
9 Defendants' Counsel notice of the termination of the Settlement; or (b) any order reducing or reversing
10 the award of attorneys' fees and/or litigation expenses and/or Awards to Plaintiffs has become Final.
11 An award of attorneys' fees and/or litigation expenses and/or awards to Plaintiffs is not a necessary term
12 of this Stipulation and is not a condition of the Settlement embodied herein. Neither Plaintiffs nor Lead
13 Counsel may cancel or terminate the Settlement based on this Court's or any appellate court's ruling
14 with respect to attorneys' fees and/or litigation expenses and/or awards to Plaintiffs.
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16
17 18. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in
18 a manner which they, in good faith, believe reflects the contributions of such counsel to the institution,
19 prosecution, and settlement of the Action. Defendants or Defendants' Releasees shall have no
20 responsibility for or liability whatsoever with respect to the allocation or award of attorneys' fees or
21 litigation expenses or awards to Plaintiffs. The attorneys' fees and/or litigation expenses and/or awards
22 to Plaintiffs that are awarded shall be payable solely from the Escrow Account.
23

24 **NOTICE AND SETTLEMENT ADMINISTRATION**

25 19. As part of the Preliminary Approval Order, Lead Plaintiff shall seek appointment of a
26 Claims Administrator. The Claims Administrator shall administer the Settlement, including but not
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1 limited to the process of receiving, reviewing and approving or denying Claims, under Lead Counsel's
2 supervision and subject to the jurisdiction of the Court. Other than Defendants' obligation to provide or
3 cause to be provided the Company's securities holders records as provided in ¶ 20 below, none of
4 Defendants, nor any other of Defendants' Releasees, shall have any involvement in or any
5 responsibility, authority or liability whatsoever for the selection of the Claims Administrator, the Plan
6 of Allocation, the administration of the Settlement, the Claims process, or disbursement of the Net
7 Settlement Fund, and shall have no liability whatsoever to any person or entity, including, but not
8 limited to, Plaintiffs, any other Settlement Class Members or Lead Counsel in connection with the
9 foregoing. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent
10 reasonably necessary to effectuate its terms.
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13 20. In accordance with the terms of the Preliminary Approval Order to be entered by the
14 Court, Lead Counsel shall cause the Claims Administrator to mail or email the Notice and Proof of
15 Claim Form to those members of the Settlement Class as may be identified through reasonable effort.
16 Lead Counsel shall also cause the Claims Administrator to have the Summary Notice published in
17 accordance with the terms of the Preliminary Approval Order to be entered by the Court. For the
18 purposes of identifying and providing notice to the Settlement Class, within seven (7) calendar days
19 after entry of the Preliminary Approval Order, Defendants shall provide or cause to be provided to the
20 Claims Administrator in electronic format, such as an Excel spreadsheet (at no cost to the Settlement
21 Fund, Lead Counsel or the Claims Administrator), the Company's reasonably available lists (consisting
22 of names and addresses) of the holders of Capstone Securities during the Settlement Class Period.
23

24 21. The Claims Administrator shall receive Claims and determine first, whether the Claim
25 is a valid Claim, in whole or part, and if valid, each Authorized Claimant's *pro rata* share of the Net
26 Settlement Fund based upon each Authorized Claimant's Recognized Claim compared to the total
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1 Recognized Claims of all Authorized Claimants (as set forth in the Plan of Allocation set forth in the
2 Notice attached hereto as Exhibit A-1, or in such other plan of allocation as the Court approves).

3
4 22. The Plan of Allocation proposed in the Notice is not a necessary term of the Settlement
5 or of this Stipulation, and it is not a condition of the Settlement or of this Stipulation that any particular
6 plan of allocation be approved by the Court. Plaintiffs and Lead Counsel may not cancel or terminate
7 the Settlement (or this Stipulation) based on this Court's or any appellate court's ruling with respect to
8 the Plan of Allocation or any other plan of allocation in this Action. Defendants and Defendants'
9 Releasees shall not object in any way to the Plan of Allocation or any other plan of allocation in this
10 Action. No Defendant, nor any of Defendants' Releasees, shall have any involvement with or liability,
11 obligation or responsibility whatsoever for the application of the Court-approved plan of allocation.
12

13 23. Any Settlement Class Member who does not submit a valid Claim Form will not be
14 entitled to receive any distribution from the Net Settlement Fund, but will otherwise be bound by all of
15 the terms of this Stipulation and Settlement, including the terms of the Judgment to be entered in the
16 Action and the releases provided for herein and therein, and will be permanently barred and enjoined
17 from bringing any action, claim, or other proceeding of any kind against Defendants or Defendants'
18 Releasees with respect to the Released Plaintiffs' Claims in the event that the Effective Date occurs
19 with respect to the Settlement.
20

21 24. Lead Counsel shall be responsible for supervising the administration of the Settlement
22 and the disbursement of the Net Settlement Fund subject to Court approval. No Defendant, nor any of
23 the Defendants' Releasees, shall be permitted to review, contest or object to any Claim Form, or any
24 decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any Claim
25 for payment by a Settlement Class Member. Lead Counsel shall have the right, but not the obligation,
26 to waive what it deems to be formal or technical defects in any Claim Forms submitted in the interests
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1 of achieving substantial justice.

2 25. For purposes of determining the extent, if any, to which a Settlement Class Member shall
3 be entitled to be treated as an Authorized Claimant, the following conditions shall apply:
4

5 (a) Each Settlement Class Member shall be required to submit a Claim Form,
6 substantially in the form attached hereto as Exhibit A-2, supported by such documents as are designated
7 therein, including proof of the Claimant's loss, or such other documents or proof as the Claims
8 Administrator or Lead Counsel, in their discretion, may deem acceptable;

9 (b) All Claim Forms must be submitted by the date set by the Court in the
10 Preliminary Approval Order and specified in the Notice. Any Settlement Class Member who fails to
11 submit a Claim Form by such date shall be forever barred from receiving any distribution from the Net
12 Settlement Fund or payment pursuant to this Stipulation (unless by Order of the Court such Settlement
13 Class Member's Claim Form is accepted), but shall in all other respects be bound by all of the terms of
14 this Stipulation and the Settlement, including the terms of the Judgment and the Releases provided for
15 herein and therein, and will be permanently barred and enjoined from bringing any action, claim or
16 other proceeding of any kind against any Defendants or Defendants' Releasees with respect to any
17 Released Plaintiffs' Claim. Provided that it is mailed by the claim-submission deadline, a Claim Form
18 shall be deemed to be submitted when postmarked, if received with a postmark indicated on the
19 envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In
20 all other cases, the Claim Form shall be deemed to have been submitted on the date when actually
21 received by the Claims Administrator;
22

23 (c) Each Claim Form shall be submitted to and reviewed by the Claims
24 Administrator, who shall determine in accordance with this Stipulation and the Plan of Allocation the
25 extent, if any, to which each Claim shall be allowed, subject to review by the Court pursuant to
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1 subparagraph (e) below as necessary;

2 (d) Claim Forms that do not meet the submission requirements may be rejected. Prior
3 to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the Claimant
4 in writing, to give the Claimant the chance to remedy any curable deficiencies in the Claim Form
5 submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all Claimants
6 whose Claim the Claims Administrator proposes to reject in whole or in part, setting forth the reasons
7 therefor, and shall indicate in such notice that the Claimant whose Claim is to be rejected has the right
8 to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph
9 (e) below; and
10

11 (e) If any Claimant whose Claim has been rejected in whole or in part desires to
12 contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the notice
13 required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of
14 reasons indicating the Claimant's grounds for contesting the rejection along with any supporting
15 documentation, and requesting a review thereof by the Court. If a dispute concerning a Claim cannot be
16 otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court.
17

18 26. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with
19 respect to the Claimant's Claim, and the Claim will be subject to investigation and discovery under the
20 Federal Rules of Civil Procedure, provided, however, that such investigation and discovery shall be
21 limited to that Claimant's status as a Settlement Class Member and the validity and amount of the
22 Claimant's Claim. No discovery whatsoever shall be allowed on the merits of this Action or of the
23 Settlement in connection with the processing of Claim Forms.
24

25 27. Lead Counsel will apply to the Court for a Class Distribution Order: (a) approving the
26 Claims Administrator's administrative determinations concerning the acceptance and rejection of the
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1 Claims submitted; (b) approving payment of any administration fees and expenses associated with the
2 administration of the Settlement from the Escrow Account; and (c) if the Effective Date has occurred,
3 directing payment of the Net Settlement Fund to Authorized Claimants from the Escrow Account.
4

5 28. Payment pursuant to the Class Distribution Order shall be final and conclusive against
6 all Settlement Class Members. All Settlement Class Members whose Claims are not approved by the
7 Court for payment shall be barred from participating in distributions from the Net Settlement Fund, but
8 otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms
9 of the Judgment, to be entered in this Action and the Releases provided for herein and therein, and will
10 be permanently barred and enjoined from bringing any action against any and all Defendants or
11 Defendants' Releasees with respect to any and all of the Released Plaintiffs' Claims.
12

13 29. No person or entity shall have any claim against Plaintiffs, Plaintiffs' Counsel, the
14 Claims Administrator or any other agent designated by Plaintiffs' Counsel, or the Defendants' Releasees
15 and/or their respective counsel, arising from distributions made substantially in accordance with the
16 Stipulation, the Plan of Allocation approved by the Court, or any order of the Court. Plaintiffs and
17 Defendants, and their respective counsel, and Plaintiffs' damages expert and all other Releasees shall
18 have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net
19 Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment
20 of any claim or nonperformance of the Claims Administrator, the payment or withholding of Taxes
21 (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection
22 therewith.
23

24 30. All proceedings with respect to the administration, processing and determination of
25 Claims and the determination of all controversies relating thereto, including disputed questions of law
26 and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court. All
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1 Settlement Class Members and Parties to this Settlement expressly waive trial by jury (to the extent any
2 such right may exist) and any right of appeal or review with respect to such determinations.

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4 **TERMS OF THE JUDGMENT**

5 31. If the Settlement contemplated by this Stipulation is approved by the Court, Lead
6 Counsel and Defendants' Counsel shall request that the Court enter a Judgment, substantially in the
7 form attached hereto as Exhibit B.

8 **CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL,**
9 **CANCELLATION, OR TERMINATION**

10 32. The Effective Date of the Settlement shall be deemed to occur on the occurrence or
11 waiver of all of the following events:

12 (a) the Court has entered the Preliminary Approval Order, substantially in the form
13 set forth in Exhibit A attached hereto, as required by ¶ 3 above;

14 (b) the Settlement Amount has been deposited into the Escrow Account in
15 accordance with the provisions of ¶ 8 above;

16 (c) Defendants have not exercised their option to terminate the Settlement pursuant
17 to the provisions of this Stipulation (including the Supplemental Agreement described in ¶ 36 below);

18 (d) Plaintiffs have not exercised their option to terminate the Settlement pursuant to
19 the provisions of this Stipulation; and

20 (e) the Court has approved the Settlement as described herein, following the period
21 set forth for notice under the Class Action Fairness Act ("CAFA"), and following notice to the
22 Settlement Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and
23 entered the Judgment and the Judgment has become Final and none of the Parties seek to terminate the
24 Settlement.

25 33. Upon the occurrence of all of the events referenced in ¶ 32 above, any and all remaining
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1 interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever
2 extinguished and the Releases herein shall be effective.

3
4 34. If: (i) Defendants exercise their right to terminate the Settlement as provided in this
5 Stipulation; (ii) Plaintiffs exercise their right to terminate the Settlement as provided in this Stipulation;
6 (iii) the Court disapproves the Settlement; or (iv) the Effective Date as to the Settlement otherwise fails
7 to occur, then:

8 (a) The Settlement and the relevant portions of this Stipulation shall be canceled and
9 terminated;

10 (b) Plaintiffs and Defendants shall revert to their respective positions in the Action
11 as of January 30, 2025;

12 (c) The terms and provisions of this Stipulation, with the exception of this ¶ 34 and
13 ¶¶ 15, 17, 37, and 54, shall have no further force and effect with respect to the Parties and shall not be
14 used in the Action or in any other proceeding for any purpose, and any Judgment or order entered by
15 the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*; and
16

17 (d) Within five (5) business days after joint written notification of termination is sent
18 by Defendants' Counsel and Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued
19 interest thereon and any funds received by Lead Counsel consistent with ¶ 17 above), less any Notice
20 and Administration Costs actually incurred or paid and less any Taxes paid, due or owing shall be
21 refunded by the Escrow Agent to the person(s) that made the respective deposits or as otherwise directed
22 by such persons or Defendants. In the event that the funds received by Lead Counsel consistent with ¶
23 17 above have been refunded to the Settlement Fund within the five (5) business days specified in this
24 paragraph, those funds shall be refunded by the Escrow Agent to the person(s) that made the respective
25 deposits or as otherwise directed by such persons or Defendants immediately upon their deposit into the
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1 Escrow Account consistent with ¶ 17 above.

2 35. It is further stipulated and agreed that Plaintiffs and Defendants shall each have the right
3 to terminate the Settlement and this Stipulation, by providing written notice of their election to do so
4 (“Termination Notice”) to the other Parties to this Stipulation within thirty (30) days of: (a) the Court’s
5 final refusal to enter the Preliminary Approval Order in any material respect; (b) the Court’s final refusal
6 to approve the Settlement or any material part thereof; (c) the Court’s final refusal to enter the Judgment
7 in any material respect as to the Settlement; or (d) the date upon which the Judgment is modified or
8 reversed in any material respect by the United States Court of Appeals for the Ninth Circuit or the
9 United States Supreme Court. However, any decision or proceeding, whether in this Court or any
10 appellate court, with respect to an application for attorneys’ fees or reimbursement of litigation expenses
11 or awards to Plaintiffs or with respect to any plan of allocation shall not be considered material to the
12 Settlement, shall not affect the finality of any Judgment, and shall not be grounds for termination of the
13 Settlement.

14 36. In addition to the grounds set forth in ¶ 35 above, Defendants shall have the unilateral
15 right to terminate the Settlement in the event that Settlement Class Members timely and validly
16 requesting exclusion from the Settlement Class meet the conditions set forth in Setting Defendants’
17 confidential supplemental agreement with Plaintiffs (the “Supplemental Agreement”), in accordance
18 with the terms of that agreement. The Supplemental Agreement, which is being executed concurrently
19 herewith, shall not be filed with the Court and its terms shall not be disclosed in any other manner (other
20 than the statements herein and in the Notice, to the extent necessary, or as otherwise provided in the
21 Supplemental Agreement) unless and until the Court otherwise directs or a dispute arises between
22 Plaintiffs and Defendants concerning its interpretation or application.
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NO ADMISSION OF WRONGDOING

37. Neither the Memorandum of Understanding, this Stipulation (whether or not consummated), including the exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Memorandum of Understanding and this Stipulation, nor any proceedings taken pursuant to or in connection with the Memorandum of Understanding, this Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Defendants or Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants or Defendants' Releasees with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants or Defendants' Releasees or in any way referred to for any other reason as against any of the Defendants or Defendants' Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered against any of the Plaintiffs' Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Plaintiffs' Releasees that any of their claims are without merit, that any of the Defendants or Defendants' Releasees had meritorious defenses, or that damages recoverable under the Amended Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as

1 may be necessary to effectuate the provisions of this Stipulation; or

2 (c) shall be construed against any of the Releasees as an admission, concession, or
3 presumption that the consideration to be given hereunder represents the amount which could be or would
4 have been recovered after trial; *provided, however*, that if this Stipulation is approved by the Court, the
5 Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from
6 liability granted hereunder or otherwise to enforce the terms of the Settlement.
7

8 **NOTICE AS REQUIRED BY CAFA**

9 38. Defendants shall be responsible for timely service of any notices that might be required
10 pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715. Defendants shall provide a copy of such
11 notices as well as proof of service of such notices to Lead Counsel.
12

13 **MISCELLANEOUS PROVISIONS**

14 39. All of the exhibits attached hereto are hereby incorporated by reference as though fully
15 set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency
16 between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of the
17 Stipulation shall prevail.
18

19 40. In the event of the entry of a final order of a court of competent jurisdiction determining
20 the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Defendants to be
21 a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is
22 required to be returned, and such amount is not promptly deposited into the Settlement Fund by others,
23 then, at the election of Plaintiffs, Plaintiffs and Defendants shall jointly move the Court to vacate and
24 set aside the Releases given and the Judgment entered in favor of Defendants and the other Releasees
25 pursuant to this Stipulation, in which event the releases and Judgment shall be null and void, and the
26 Parties shall be restored to their respective positions in the litigation as provided in ¶ 34 above and any
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1 cash amounts in the Settlement Fund (less any Taxes paid, due or owing with respect to the Settlement
2 Fund and less any Notice and Administration Costs actually incurred, paid or payable) shall be returned
3 as provided in ¶ 34.
4

5 41. The Parties intend this Stipulation and the Settlement to be a final and complete
6 resolution of all disputes asserted or which could be asserted by Plaintiffs and any other Settlement
7 Class Members against the Defendants or Defendants' Releasees with respect to the Released Plaintiffs'
8 Claims, including Unknown Claims. Accordingly, Plaintiffs and their counsel and Defendants and their
9 counsel agree not to assert in any forum that this Action was brought by Plaintiffs or defended by
10 Defendants in bad faith or without a reasonable basis. No Party shall assert any claims of any violation
11 of Rule 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution, defense, or
12 settlement of this Action. The Parties agree that the amounts paid and the other terms of the Settlement
13 were negotiated at arm's-length and in good faith by the Parties, and reflect the Settlement that was
14 reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who
15 were fully competent to assess the strengths and weaknesses of their respective clients' claims or
16 defenses.
17

18 42. While retaining their right to deny that the claims asserted in the Action were
19 meritorious, Defendants and their counsel, in any statement made to any media representative (whether
20 or not for attribution) will not assert that the Action was commenced or prosecuted in bad faith, nor will
21 they deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily
22 after consultation with competent legal counsel. In all events, Plaintiffs and their counsel and
23 Defendants and their counsel shall not make any accusations of wrongful or actionable conduct by any
24 Party concerning the prosecution, defense, and resolution of the Action, and shall not otherwise suggest
25 that the Settlement constitutes an admission of any claim or defense alleged.
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1 43. The terms of the Settlement, as reflected in this Stipulation, may not be modified or
2 amended, nor may any of its provisions be waived, except by a writing signed on behalf of both Plaintiffs
3 and Defendants (or their successors-in-interest).
4

5 44. The headings herein are used for the purpose of convenience only and are not meant to
6 have legal effect.

7 45. The administration and consummation of the Settlement as embodied in this Stipulation
8 shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of
9 entering orders providing for awards of attorneys' fees and litigation expenses to Plaintiffs' Counsel
10 and awards to Plaintiffs and enforcing the terms of this Stipulation, including the Plan of Allocation (or
11 such other plan of allocation as may be approved by the Court) and the distribution of the Net Settlement
12 Fund to Settlement Class Members.
13

14 46. The waiver by one Party of any breach of this Stipulation by any other Party shall not be
15 deemed a waiver of any other prior or subsequent breach of this Stipulation.

16 47. This Stipulation and its exhibits and the Supplemental Agreement constitute the entire
17 agreement among Plaintiffs and the Defendants concerning the Settlement and this Stipulation and its
18 exhibits. All Parties acknowledge that no other agreements, representations, warranties, or inducements
19 have been made by any Party hereto concerning this Stipulation, its exhibits or the Supplemental
20 Agreement other than those contained and memorialized in such documents.
21

22 48. This Stipulation may be executed in one or more counterparts, including by signature
23 transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed
24 counterparts and each of them shall be deemed to be one and the same instrument.

25 49. This Stipulation shall be binding upon and inure to the benefit of the successors and
26 assigns of the Parties, including any and all Releasees and any corporation, partnership, or other entity
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1 into or with which any Party hereto may merge, consolidate or reorganize.

2 50. The construction, interpretation, operation, effect and validity of this Stipulation, the
3 Supplemental Agreement and all documents necessary to effectuate it shall be governed by the internal
4 laws of the State of California without regard to conflicts of laws, except to the extent that federal law
5 requires that federal law govern.
6

7 51. Any action arising under or to enforce this Stipulation, or any portion thereof, shall be
8 commenced and maintained only in the Court.

9 52. This Stipulation shall not be construed more strictly against one Party than another
10 merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the
11 Parties, it being recognized that it is the result of arm's-length negotiations between the Parties and all
12 Parties have contributed substantially and materially to the preparation of this Stipulation.
13

14 53. All counsel and any other person executing this Stipulation and any of the exhibits
15 hereto, or any related Settlement documents, warrant and represent that they have the full authority to
16 do so and that they have the authority to take appropriate action required or permitted to be taken
17 pursuant to the Stipulation to effectuate its terms.
18

19 54. Lead Counsel and Defendants' Counsel agree to cooperate fully with one another in
20 seeking Court approval of the Preliminary Approval Order and the Settlement, as embodied in this
21 Stipulation, and to use best efforts to promptly agree upon and execute all such other documentation as
22 may be reasonably required to obtain final approval by the Court of the Settlement.

23 55. If any Party is required to give notice to another Party under this Stipulation, such notice
24 shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or
25 facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:
26

27 If to Plaintiffs or Lead Counsel:
28

Pomerantz LLP
Attn: Brenda Szydlo, Esq.
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (917) 463-1044
Email: bszydlo@pomlaw.com

The Rosen Law Firm, P.A.
Attn: Jonathan Stern, Esq.
275 Madison Avenue, 40th Floor
New York, New York 10016
Telephone: (212) 686-1060
Facsimile: (212) 202-3827
Email: jstern@rosenlegal.com

If to Defendants:

Latham & Watkins LLP
Attn: Colleen C. Smith
12670 High Bluff Drive
San Diego, California 92130
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56. Except as otherwise provided herein, each Party shall bear its own costs.

57. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular

1 circumstances of each individual Settlement Class Member.

2 IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed, by
3 their duly authorized attorneys, as of April 4, 2025.
4

5
6 **SIGNED:**

7 **POMERANTZ LLP**

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10 ***Additional Counsel to Lead Plaintiff***